



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 6775-99

17 March 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. The Board also considered the advisory opinion, dated 17 February 2000, from the Military Law Branch, Headquarters, Marine Corps, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Marine Corps on 1 February 1996 for four years as a SSGT (E-6). At the time of your reenlistment you had completed more than 10 years of prior active service.

The record reflects that you received an adverse fitness report with average to below average marks for the period 23 March to 25 June 1996. The reporting senior stated that although you were filling the billet of a lieutenant as the battalion supply officer, you had difficulty in accomplishing the job assignment and meeting established standards required or expected of a staff noncommissioned officer (SNCO). Your performance and mission accomplishment on a daily basis were questionable and had to be continually checked for accuracy, as demonstrated by the complete disarray of the battalion's fiscal accounts. In comparison with others of the same grade, you lacked both in leadership and

judgment. Personal problems distracted and hampered your ability to perform to the established standards of a SNCO. The reviewing officer concurred with the reporting senior's marks and comments. The fitness report indicated that you attached a statement to the report. However, that statement was not filed in the records made available to the Board.

On 22 October 1996 you were convicted by summary court-martial of dereliction in the performance of your duties for by allowing the unauthorized use of your bachelor's enlisted quarters (BEQ) by a non-dependent guest. You were sentenced to reduction in rank to SGT (E-5), a forfeiture of \$1100, and 60 days of restriction. Prior to the court-martial, you entered into a pre-trial agreement to plead guilty to this offense, providing the convening authority agreed to withdraw the charge and specification from a special court-martial and not to refer them to any other court-martial or administrative proceeding. On 4 December 1996 you submitted a request for restoration of rank and clemency. What action that was taken, if any, is neither shown in the record nor provided with your application.

You received a second adverse fitness report for the period 4 July to 6 November 1996 which reflected the foregoing summary court-martial conviction. Your marks ranged from excellent to below average. You were not recommended for advancement and the reviewing officer concurred with the reporting senior's comments. You did not submit a statement in rebuttal to the report.

A subsequent fitness for the period 14 August 1997 to 28 February 1998 noted that during the reporting period, you received nonjudicial punishment for violation of UCMJ articles 86 and 92. The reviewing officer stated that although you were a good worker and technically competent, you could not be trusted to perform without supervision. He disagreed with the reporting senior's general value assessment of you and the service markings assigned. He stated he would have marked your general value as above average and below average in attention to duty, judgment, leadership, loyalty, and growth potential. You rebutted the report, requesting removal of the reviewing officer's adverse comments. You asserted that if you were an NCO that could not be trusted, then you should not have been recommended or requested by name to be the supply NCO for an exercise. The fitness report was reviewed by a senior officer who concurred with the reviewing officer's comments. He opined that the marks recommended by the reviewing officer accurately represented your shortcomings. He stated your rebuttal was not relevant and the fact that you performed your duties as supply NCO for an exercise was not justification to modify the comments in the report. He asserted that SGTs were expected to perform well in their occupational specialties, and especially SGTs with your experience. He found

no bias in the reviewing officer's evaluation of your character and value to the Marine Corps.

Available records indicate that you have since served without further incident and your current enlistment, as extended, expires on 29 March 2000.

In its review of your application, the Board conducted a careful search of your service record for any mitigating matter which might warrant restoration to SSGT and removal of the two adverse fitness reports for periods ending 25 June and 4 July 1996. However, no justification for restoration in rank or removal of the reports could be found. The Board noted the letters from a captain and four SNCOs who recommend approval of your application. The Board also noted your statement explaining that the summary court-martial conviction was the result of your allowing a female civilian friend to stay in your unoccupied BEQ room until she could find an adequate place to stay because of a violent domestic situation. You state that while she was occupying your room the military police received a call of possible drug use in the room.

The Board substantially concurred with the comments contained in the advisory opinion. In this regard, the Board noted that you pled guilty to the charge and, and as a result of a plea agreement, the convening agreed not to refer the charges to a special court-martial or administrative separation proceedings. Accordingly, the Board concluded that the sentence was neither unjust or excessive given the serious lapse in your judgment as a SNCO. The Board further noted that you received a subsequent disciplinary action not mentioned in your application. It appeared to the Board that you failed to learn from your earlier disciplinary experience and this demonstrated that you were no longer a Marine who was competitive with his peers for promotion. The Board was aware that as a SGT, you are at service limitations and may not reenlist at the expiration of your enlistment. However, this does not provide a valid basis for restoration of rank. With regard to the two contested performance evaluations, you have provided no probative evidence that the adverse comments and marks assigned are not an accurate reflection of your performance.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board.

In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure